

# **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

IN RE:

CHRISTOPHER C. DONIGIAN,  
d/b/a EMCON BUILDERS,  
AND SANDRA DONIGIAN,  
Debtors

Case No: 08-12455-MWV  
Chapter 13

\* \* \* \* \*

LAWRENCE P. SUMSKI,  
Chapter 13 Trustee,  
Plaintiff

v.

Adv. 10-1098-LHK

CHRISTOPHER C. DONIGIAN, d/b/a  
EMCON BUILDERS, JACOB DONIGIAN,  
DONIGIAN PROPERTIES, LLC,  
a/k/a DONIGIAN PROPERTIES,  
Defendants

\* \* \* \* \*

DEPOSITION OF JACOB A. DONIGIAN

This deposition taken at the offices of  
Sheehan, Phinney, Bass + Green, 1000 Elm  
Street, Manchester, New Hampshire, on  
Tuesday, March 8, 2011, commencing at  
10:22 a.m.

**CONNELLY**  
**REPORTING & VIDEO SERVICES, INC.**  
**WORLDWIDE VIDEOCONFERENCING**

 **ORIGINAL**

32 GAULT ROAD  
603-472-5745

BEDFORD, NH 03110  
FAX 603-472-4969

[www.nhdepositions.com](http://www.nhdepositions.com)

3/8/11 J.A. DONIGIAN

**APPEARANCES****For Jacob A. Donigian:**

MARSHALL LAW, PLLC  
47 Depot Road  
East Kingston, New Hampshire 03827  
By: Brian D. Kenyon, Esq.  
Keri J. Marshall, Esq.

**For Chapter 13 Trustee:**

SHEEHAN, PHINNEY, BASS + GREEN  
1000 Elm Street, PO Box 3701  
Manchester, New Hampshire 03105-3701  
By: James S. LaMontagne, Esq.

**Court Reporter:** Alix M. Godbout, LCR/RPR  
NH LCR No. 29 (RSA 331-B)

**STIPULATIONS**

It is agreed that the deposition shall be taken in the first instance in stenotype and when transcribed may be used for all purposes for which depositions are competent under the Federal Bankruptcy Rules.

Notice, filing, caption and all other formalities are waived. All objections except as to form are reserved and may be taken in court at time of trial.

It is further agreed that if the deposition is not signed within thirty days after submission to counsel for the deponent, the signature of the deponent is waived.

3/8/11 J.A. DONIGIAN

## I N D E X

## WITNESS

Jacob A. Donigian

## EXAMINATION

PAGE

By Mr. LaMontagne.....4

## EXHIBITS

PAGE

1	10/20/06 warranty deed from Donigian Properties to Christopher Donigian.....	37
2	11/30/06 HUD settlement statement.....	39
3	11/28/06 payoff statement for \$261,000.....	40
4	11/30/06 check (copy) from Starter Title Services to Donigian Properties, LLC, for \$261,000.....	43
5	6/25/07 warranty deed from Donigian Properties to Christopher Donigian.....	45
6	9/5/07 HUD settlement statement.....	48
7	9/8/07 payoff statement for \$208,030.....	49
8	Copies of four checks.....	55
9	11/2/07 check (copy) from Christopher Donigian to Donigian Properties, LLC, for \$40,000.....	56
10	9/17/07-10/15/07 Pentucket Bank statement for Jacob A. Donigian and Janice A. Donigian.....	57
11	9/1/07-11/30/07 TD Banknorth statement Jake Donigian, d/b/a Donigian Properties.....	58
12	4/13/08 bill of sale for International T-D 7 bulldozer.....	64
13	4/26/04 warranty deed from Mr. and Mrs. Donigian to Christopher Donigian.....	71
14	5/15/06 warranty deed from Christopher Donigian to Jacob Donigian.....	75
15	Town of Barnstead building permit.....	78
16	4/26/04 promissory note from Christopher Donigian to Jacob Donigian.....	91
17	4/26/04 mortgage deed from Christopher Donigian to Mr. and Mrs. Donigian.....	97

3/8/11 J.A. DONIGIAN

1 JACOB A. DONIGIAN, Sworn

2 EXAMINATION

3 Q. (BY MR. LaMONTAGNE) Sir, could you please state  
4 your full name for the record, please?

5 A. Jacob A. Donigian.

6 Q. And your address?

7 A. 134 Chester Road, Fremont, New Hampshire.

8 Q. And have you ever been deposed before?

9 A. Yes.

10 Q. How many times?

11 A. Once. One time.

12 Q. And was that one time in connection with ---

13 A. With this bankruptcy.

14 Q. Okay. No other times before then?

15 A. Not that I can remember.

16 Q. And are you employed, sir?

17 A. Self.

18 Q. And what do you do?

19 A. General contractor and developer.

20 Q. And how long have you been doing that for?

21 A. Since 1962.

22 Q. Did you say "1962"?

23 A. Yes.

3/8/11 J.A. DONIGIAN

1 Q. And what is the name of your company?

2 A. Since 2000, it's Donigian Properties, LLC.

3 Q. And before it was the LLC?

4 A. It was Jake Donigian Construction.

5 Q. So it was Jake Donigian Construction from 1962 to  
6 the year 2000?

7 A. Yes.

8 Q. And then, after the year 2000, it's been Donigian  
9 Properties, LLC?

10 A. That's correct.

11 Q. Are you primarily a residential builder or a  
12 commercial builder?

13 A. Residential.

14 Q. And do you -- do you build the houses yourself or  
15 do you retain a builder to do that?

16 A. I have not built any houses since 2000. I'm just  
17 a developer and sell lots and finance  
18 construction.

19 Q. Okay. So for the past 11 years, you haven't built  
20 a home.

21 A. No, I haven't.

22 Q. Okay. Have you ever built a home on a lot owned  
23 by someone else?

3/8/11 J.A. DONIGIAN

1 the street and say, "Do you want to build a  
2 house?" So these were people I knew and, no, they  
3 had no problem.

4 Q. Okay. And -- well, let me ask you this. Maybe it  
5 was a bad question.

6 Didn't they have a risk that, at the end of  
7 the day, they would build a house on a lot that  
8 you owned and you would show up as owner and  
9 collect the proceeds from the buyer and they would  
10 be left to sue you for what they did?

11 A. If they did, I never heard about it.

12 Q. Okay. All right. In those instances where you  
13 did finance construction, in how many transactions  
14 do you think you did that?

15 A. Since when?

16 Q. Since 2000.

17 A. Since 2000. Oh, I'd say about at least thirty  
18 times, thirty or 35 times.

19 Q. Okay. And since 2000, how many sites have you  
20 built? Not you, but have had properties built  
21 upon.

22 A. Let's see. About forty.

23 Q. About how many?

3/8/11 J.A. DONIGIAN

1 A. Forty.

2 Q. Okay. So in the past 11 years, you've had --  
3 you've had forty lots in which builders have built  
4 homes on.

5 A. Yes.

6 Q. And the majority of them, you have financed.

7 A. Yes.

8 Q. Okay. And now, have you financed because these  
9 builders couldn't get construction loans from a  
10 conventional lender?

11 A. That and, also, the prices that the banks were  
12 charging with the points and everything were more  
13 than I was getting.

14 Q. Okay. So you were collecting interest on your ---

15 A. Yes, I was.

16 Q. Okay. Were you collecting interest on the  
17 purchase of the lot, the balance that was due to  
18 you?

19 A. Sometimes.

20 Q. And explain to me how you would finance a builder.  
21 And, again, we're talking about all these builders  
22 other than Emcon.

23 A. Okay.



3/8/11 J.A. DONIGIAN

1 to do is I'd like to focus in on your actions with  
2 the builders other than Emcon. Okay? So just  
3 let's take them off the table for now.

4 A. Okay.

5 Q. Okay? When you sold a lot to a builder, did you  
6 -- was it usually financed or did they pay you in  
7 cash for the lot?

8 A. I didn't have too many that paid for cash on the  
9 whole thing. Most of the time, they gave me a  
10 deposit of twenty or 25,000 and I would carry the  
11 balance of the lot, along with financing the  
12 construction.

13 Q. Okay. Now, when you say you carried the balance  
14 of the purchase price on the lot, did the builder  
15 sign a promissory note?

16 A. No. We just signed an agreement.

17 Q. You signed an agreement?

18 A. Yes.

19 Q. Okay. And, typically, what would that agreement  
20 say?

21 A. That agreement would say the price of the lot, how  
22 much the deposit was, and the balances due when  
23 the house was transferred.

3/8/11 J.A. DONIGIAN

1 Q. Okay.. Did you take a mortgage out against the  
2 property to ---

3 A. No, I didn't.

4 Q. --- secure the agreement?

5 A. No, I didn't.

6 Q. And at the time that you signed this agreement,  
7 did you transfer the lot into the builder's name?

8 A. No, I didn't.

9 Q. Okay. So you retained ownership of the lot.

10 A. That's correct.

11 Q. Okay. Were there any -- were there any instances  
12 where you would just outright deed the lot to the  
13 builder at the outset of your engagement?

14 A. Only if they paid for the whole thing.

15 Q. And I believe you testified earlier that didn't  
16 happen very often.

17 A. No, it didn't.

18 Q. How many times do you think it happened?

19 A. I would say, from 6,000, probably seven or eight  
20 times.

21 Q. Seven or eight times out of 6,000, did you say?

22 A. Out of -- I'm sorry. From 2000 till today.

23 Q. Okay. And how was the lot price arrived at?

3/8/11 J.A. DONIGIAN

1 collect on a balance that was owed to you?

2 A. No.

3 Q. At what point would you -- bad question.

4 Would you attend the closings in those  
5 transactions where you owned the property and a  
6 builder was building on that lot?

7 A. No, because when they were closing, I didn't own  
8 the property. I would transfer them the property,  
9 probably a week or so before the closing, and they  
10 would take the deed and transfer it to whoever  
11 they sold it for. When they got paid, they would  
12 pay me.

13 Q. Okay.

14 A. But I didn't attempt -- I didn't -- I don't think  
15 I attended more than one or two out of thirty or  
16 forty closings.

17 Q. Okay. Did these builders ever express concern to  
18 you that they were building on your lot and they  
19 didn't own the lot? Didn't they have some risk  
20 there?

21 A. They probably did, but they couldn't get financing  
22 anywhere else. And I knew them. We had good  
23 relationships. I just didn't pick somebody off

3/8/11 J.A. DONIGIAN

1 Q. Okay.. You would cut checks to your builder.

2 A. Yes.

3 Q. And then, the builder would cut checks to his ---

4 A. That's right.

5 Q. --- subcontractors. Okay.

6 How did you keep track of how much money you  
7 would lend to a particular builder?

8 A. Not very well, I guess. It was just whatever I  
9 had in my checking account. Whatever checks they  
10 had, I would go back and see what they got and I  
11 could pretty well figure out if -- how much  
12 they're taking and I'd give 'em whatever I said.

13 Q. Okay. So you would know -- what if you had a  
14 builder that was building on two different lots?

15 A. Well, the lot numbers would be on the check.

16 Q. Okay. So you would notate the check.

17 A. Yes, and the stub.

18 Q. Okay. And so, you would not keep a running total,  
19 then, of what you had lent out.

20 A. More or less. More or less, in my head, I would  
21 know, you know.

22 Q. Okay. So, at the end of the day, when the house  
23 is about to be sold, would you provide the builder

3/8/11 J.A. DONIGIAN

1 with an invoice?

2 A. I would provide -- most of the time, I would  
3 provide 'em with some kind of a figure on what  
4 they owed me with the lot cost, how much they had  
5 borrowed, and what their interest was gonna be and  
6 just, you know, give 'em a bill for it.

7 Q. And did you ever establish with the builder a,  
8 we'll say, priority of payment plan? Meaning, at  
9 closing, if the builder didn't have enough to pay  
10 the subcontractors, were you -- did it make a  
11 difference -- were you the first one paid, no  
12 matter what, or were you the last one paid, no  
13 matter what?

14 A. It all depended. The time that -- the times that  
15 they didn't pay me all the money, I was probably  
16 the last one that they paid because they didn't  
17 have enough. But I would wait. You know, I would  
18 wait until they did have the money because, most  
19 of the time, the bank withheld. Like I said  
20 before, they would have stuff that was not done.

21 Q. Okay. All right. Did you ever have an  
22 opportunity, when you were working with one of  
23 these builders, where you conveyed property to the

3/8/11 J.A. DONIGIAN

1 builder and the sale didn't take place?

2 A. Yes.

3 Q. What happened? How many times did that happen?

4 A. I would say a half dozen times over the years.

5 Q. And that's between 2000 and present day.

6 A. Right.

7 Q. Okay. And what did you -- what did you guys do at  
8 that point, you and the builder?

9 A. I would just retain the property.

10 Q. Okay. So would he -- would the builder deed the  
11 property back to you?

12 A. He never got the deed.

13 Q. Okay. All right. So I just want to clarify,  
14 because my question was, was there ever a time  
15 when you deeded property to a builder in  
16 anticipation of a closing and the closing did not  
17 take place.

18 A. No.

19 Q. Okay. So that never happened.

20 A. That never happened to me.

21 Q. Okay. All right. Who was in charge -- in those  
22 instances when you did deed a lot to a builder,  
23 who was in charge of recording that deed?

3/8/11 J.A. DONIGIAN

1 A. Which deed? The deed from me to them?

2 Q. From you to the builder.

3 A. From me to the builder, I was.

4 Q. Okay. Did you ever -- were there any -- were  
5 there ever any problems where you did not record  
6 the deed in time for the closing?

7 A. I don't remember, you know, that I ever dropped  
8 the ball as far as recording it.

9 Q. Okay.

10 A. To a legitimate P&S agreement.

11 Q. Did you ever forget to record a deed from you to a  
12 builder?

13 A. The only time I'd forget is if the deal did not go  
14 through. Sometimes I would. But most of the  
15 time, the builder was not involved. It was just  
16 transferring a lot that I probably just put the  
17 deed someplace and I didn't record it only two or  
18 three times that I know.

19 Q. Okay. Now, I'd like to shift focus a little bit  
20 and talk about the relationship that you had with  
21 Emcon Builders, as a developer.

22 A. Okay.

23 Q. Okay? Was it the same type of process that you

3/8/11 J.A. DONIGIAN

1 had with the other builders that you worked with?

2 A. Basically, it was, yes.

3 Q. What were the -- were there any differences?

4 A. Well, sometimes I did not take a deposit, where he  
5 was my son, and sometimes I didn't charge him  
6 interest.

7 Q. Sometimes you didn't charge him...?

8 A. I didn't charge him interest.

9 Q. Okay. How many transactions did you have with  
10 your son? And when I say "transactions" -- again,  
11 bad question. I apologize.

12 How many lots did you ---

13 A. How many lots.

14 Q. --- give to your son to build upon?

15 A. Wait a minute. One, two, three -- five, six --  
16 seven or eight.

17 Q. Okay. And I think five were in Fremont and two in  
18 Allenstown?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. Okay. And of those seven transactions, did your  
23 son ever sign a promissory note for the lot?



3/8/11 J.A. DONIGIAN

1 price.

2 Q. And he never said, "Dad, that's too much for the  
3 lot. I can't build on it for that price."

4 A. No, because then he wouldn't be building on it.

5 Q. Okay.

6 A. I really did not overcharge him for anything.

7 Q. I'm not suggesting you did.

8 A. No, I really didn't.

9 Q. Did you finance every one of those seven  
10 transactions for your son?

11 A. Yes.

12 Q. And was it -- the financing with your son, was it  
13 similar to the financing with the other builders  
14 where he would come to you after something has  
15 been done, such as the foundation, and you would  
16 then pay him?

17 A. Yes.

18 Q. And then, he would pay the subcontractors?

19 A. He was -- it was his job to pay the subcontractors  
20 and the materials.

21 Q. Okay. Did he ever make his request for financing  
22 in writing to you?

23 A. I think a couple of times. Yeah, some of the

3/8/11 J.A. DONIGIAN

1 A. I think he must have once or twice, but not at the  
2 end I don't think he did.

3 Q. Okay. Why only once or twice and not every time?

4 A. I haven't any idea. I just thought -- I didn't  
5 require him or I didn't ask him to do it. He just  
6 didn't do it.

7 Q. Okay. Did you ever have an agreement with your  
8 son, as you did with the other builders, that sort  
9 of laid out the terms of deposit, how much is left  
10 to be paid, and when it's going to be paid?

11 A. A lot of times not on paper.

12 Q. Okay. So you had an oral agreement with your son?

13 A. Yes.

14 Q. Okay. And, typically, what was your oral  
15 agreement with your son for these seven  
16 transactions?

17 A. At first, a couple, I think he gave me a deposit.  
18 After that, he didn't have a deposit. He just  
19 said, "I've got a customer for this home and I'd  
20 like to build on it," and we started from there.  
21 And I says, "Well, the price of the lot is such  
22 and such and, you know, what type -- how many  
23 square foot house are you building" and this and

3/8/11 J.A. DONIGIAN

1 Q. Okay.. So May or June of '07, that is when he  
2 promised to pay you \$95,000 for the lot.

3 A. Yes.

4 Q. Okay. And then, it was between May and June and  
5 September 5, the closing date, that he incurred  
6 the \$100,000 in construction financing.

7 A. Yes.

8 Q. Okay. And you provided -- why did you provide him  
9 with this payoff statement?

10 A. I can't answer that. I usually had one of these.  
11 That one there was -- this one here was, must have  
12 been done by my wife.

13 Q. Okay.

14 A. Because that's all typed up. I don't know. I  
15 think she did that.

16 MR. KENYON: What's the number?

17 THE WITNESS: Okay. That's Exhibit 3.

18 Q. So you're saying that Exhibit 3 was prepared by  
19 your wife?

20 A. Yes.

21 Q. Would she have prepared it at your direction?

22 A. She probably found one of these papers and just  
23 typed it up.

3/8/11 J.A. DONIGIAN

1 A. Yes. .

2 Q. Okay. All right. I'm going to show you -- I'm  
3 going to show you a document and ask you if you  
4 recognize it.

5 A. Yeah.

6 Q. Okay.

7 A. This looks like the same lot.

8 Q. And what is the document that you're holding right  
9 now?

10 A. It's a settlement statement.

11 Q. And is it a settlement statement for 39 Chestnut  
12 Drive?

13 A. Yes.

14 MR. LaMONTAGNE: Okay. Could we mark that as  
15 Exhibit 6, please?

16 (Discussion was held off the record.)

17 (J. Donigian Exhibit 6 marked for Id.)

18 Q. (BY MR. LaMONTAGNE) Mr. Donigian, will you agree  
19 with me that the closing on 39 Chestnut Drive took  
20 place on September 5, 2007, as indicated by the  
21 distribution date in -- near box H?

22 A. Yes, it seems to.

23 Q. Okay. I want to ask you -- I'm going to give you

3/8/11 J.A. DONIGIAN

1 Q. Okay..

2 A. You know, and this one here, it was more involved,  
3 so I think I just wrote it out and I must have  
4 given this to Chris.

5 Q. Okay. But the point being is that this is what  
6 you -- the total, \$208,030, that's what you  
7 expected to be paid at closing on 39 Chestnut  
8 Drive.

9 A. Definitely.

10 Q. Okay. And as far as Exhibit 3 is concerned, even  
11 though your wife put it together, you expected to  
12 be paid \$261,000 at the closing for lot 31, 32  
13 Chestnut Drive.

14 A. Yes.

15 Q. Okay. Do you remember if you were paid \$208,000  
16 at the closing on 39 Chestnut Drive?

17 A. No. It looks like 140 right here.

18 Q. Okay. So ---

19 A. I got paid 140.

20 Q. Okay. So you were paid 140 of the \$208,000?

21 A. Yes, I was.

22 Q. And the balance due is approximately \$68,000?

23 A. Yes.

3/8/11 J.A. DONIGIAN

1 another document and ask you if you recognize  
2 that.

3 A. Yes. That's my scribbling.

4 Q. And could you tell me what that document is?

5 A. This is the total owed on -- what he owed me for  
6 39 Chestnut Drive.

7 Q. Okay. And what is it dated?

8 A. September 8th.

9 Q. Okay.

10 A. Of '07.

11 MR. LaMONTAGNE: I'd like to mark that as  
12 Exhibit 7, please.

13 (J. Donigian Exhibit 7 marked for Id.)

14 Q. (BY MR. LaMONTAGNE) And so this, what has been  
15 marked as Exhibit 7, a payoff, the lot was  
16 \$95,000; is that correct?

17 A. Yes, it is.

18 Q. And the loan that is listed as \$100,000, was that  
19 for financing? Excuse me. Was that for  
20 construction financing?

21 A. That was for construction, yes.

22 Q. Okay. And what is "Aggregate"?

23 A. I must have hauled some material, like stone and

3/8/11 J.A. DONIGIAN

1 Q. Have you ever been paid that \$68,000?

2 A. No.

3 Q. Do you remember when you were paid that \$140,000?

4 A. If I remember, it was two separate payments. I  
5 think it was either 140 or 90 and 50, something  
6 like that.

7 Q. Okay. I want to show you a copy of a check.

8 Now, what I'm showing Mr. Donigian is a  
9 single page with four checks on it. And I'm going  
10 to direct his attention to the top check and ask  
11 him if he recognizes the copy of that top check.

12 A. Yes.

13 Q. Okay. And what is that, sir?

14 A. That's partial payment for lot 12.

15 Q. Okay. So the top check -- why don't we mark it as  
16 an exhibit, please.

17 (J. Donigian Exhibit 8 marked for Id.)

18 Q. (BY MR. LaMONTAGNE) Okay. So, Mr. Donigian, on  
19 Exhibit 8, the check at the top of the page is  
20 checked 3439; is that correct?

21 A. Yes.

22 Q. And it's made payable to Donigian Properties?

23 A. That's right.

3/8/11 J.A. DONIGIAN

1 Q. And that's you?

2 A. Yes, it is.

3 Q. Okay. And it's for \$100,000; is that correct?

4 A. That's correct.

5 Q. Okay. And it's dated September 11, 2007?

6 A. Yeah.

7 Q. Okay. And it's your testimony that this payment  
8 was made by Emcon Builders to Donigian Properties,  
9 a partial payment for the moneys owed to Donigian  
10 Properties for 39 Chestnut Drive.

11 A. Yes.

12 Q. Okay. I'd like to show you another document and  
13 ask you if you recognize that.

14 A. Yes, I do. There's the \$40,000.

15 Q. Okay. And what is -- can we mark that as Exhibit,  
16 I think, 9, please?

17 (J. Donigian Exhibit 9 marked for Id.)

18 Q. (BY MR. LaMONTAGNE) Okay. So Mr. Donigian, what  
19 has been marked as Exhibit 9, that's an Emcon  
20 check to Donigian Properties; is that correct?

21 A. That's correct.

22 Q. And it's for \$40,000; correct?

23 A. Correct.



3/8/11 J.A. DONIGIAN

1 Q. All right. Is that an additional partial payment  
2 for 39 Chestnut Drive?

3 A. Yes, it is.

4 Q. Okay. And that was to pay -- that was a payment  
5 on the \$208,000 that you owed -- that Emcon owed  
6 Donigian Properties as of September 5, 2007.

7 A. Yes.

8 I hope you don't have one there for 68,  
9 because I never got it.

10 Q. No, I don't.

11 A. Phew. I thought I lost my mind.

12 MR. KENYON: And \$68,000.

13 THE WITNESS: I know.

14 Q. (BY MR. LaMONTAGNE) There you go. I'm going to  
15 show you another document and ask you if you  
16 recognize that.

17 A. Yeah. That's my account.

18 MR. LaMONTAGNE: Okay. Could we mark that as  
19 Exhibit 10, please?

20 (J. Donigian Exhibit 10 marked for Id.)

21 Q. (BY MR. LaMONTAGNE) Now, what I'd like to do is  
22 I'd like to look at Exhibits 8 and 10. And before  
23 we go any further, could you tell me what Exhibit

3/8/11 J.A. DONIGIAN

1 10 is, please?

2 A. Exhibit 10 is my monthly statement.

3 Q. Okay. And that's a personal bank statement as of  
4 October 15, 2007?

5 A. Yes, it is.

6 Q. Okay. At Pentucket Bank?

7 A. That's right.

8 Q. Okay. And that's your personal account?

9 A. That's my account where all my money goes.

10 Q. Okay. You'll see, under "Transaction Detail,"  
11 that, on September 17, there was a deposit of a  
12 hundred-thousand-dollar check. Do you see that?

13 A. Yes, I do.

14 Q. Okay. Is that deposit the deposit of the check  
15 from Emcon Builders?

16 A. Yes, it is.

17 Q. Okay. I'll show you yet another document. I'm  
18 going to ask you if you recognize that.

19 A. Yeah. This is a statement, also, from the bank.

20 MR. LaMONTAGNE: Okay. Could we mark that as  
21 Exhibit 11, please?

22 (J. Donigian Exhibit 11 marked for Id.)

23 Q. (BY MR. LaMONTAGNE) Now, Mr. Donigian, this is --

3/8/11 J.A. DONIGIAN

1 is this also a bank statement of yours?

2 A. Yes, it is.

3 Q. Okay. And under "Deposits," it states, on 11/2, a  
4 deposit of \$40,000; is that correct?

5 A. Yes.

6 Q. Okay. And that notation that's handwritten next  
7 to it, "Lot number 12," I think it says "Woodridge  
8 E-S-T," did you write that?

9 A. No.

10 Q. Okay. Is the \$40,000 deposit the check that was  
11 sent to you by Emcon Builders for 39 Chestnut  
12 Street -- excuse me -- 39 Chestnut Drive?

13 A. Yes.

14 Q. And lot number 12 in Woodridge Estate, that's  
15 actually 39 Chestnut Drive; correct?

16 A. That's correct.

17 Q. Okay. After you made the construction loan to  
18 Emcon for 39 Chestnut Drive, did you loan any  
19 further money to Emcon Builders?

20 A. Not for lots, I don't think.

21 Q. Did you loan money to Emcon Builders for anything?

22 A. I think I gave him some checks, some money for  
23 certain things that he had to do, but I don't

3/8/11 J.A. DONIGIAN

1 Q. When did you ask your son to transfer the lot back  
2 into your name?

3 A. I think it was about the time we were going to get  
4 the permit.

5 Q. About the time ---

6 A. '06.

7 Q. Okay.

8 A. In '06.

9 Q. I'm going to show you a document and ask you if  
10 you recognize it.

11 A. That says '08, yeah.

12 Yeah, it was '06. This was recorded in '08.

13 Q. Okay. Do you recognize the document, sir?

14 A. Yes.

15 MR. LaMONTAGNE: Okay. Could we have it  
16 marked as Exhibit 14?

17 (J. Donigian Exhibit 14 marked for Id.)

18 Q. (BY MR. LaMONTAGNE) Okay. So, Mr. Donigian,  
19 Exhibit 14 is a two-page document; correct?

20 A. That's correct.

21 Q. And it is a deed from Christopher Donigian to you,  
22 individually; is that correct?

23 A. That's correct.

3/8/11 J.A. DONIGIAN

1 times he did. He put something on paper that he  
2 wanted so much for a draw. But, you know, it was  
3 just -- I don't think I ever recorded any of it,  
4 because I was doing the same thing. I was keeping  
5 everything in the checking account, just counting  
6 the steps.

7 Q. So you kept track of how much you were financing  
8 your son by your checkbook, essentially.

9 A. That's correct. Because he got no cash. All he  
10 got was checks, so...

11 Q. And every check was notated with the specific lot  
12 number that he was working on.

13 A. That's correct.

14 Q. So, if he was working on more than one lot, you  
15 could differentiate between lot 12 and lot 13, as  
16 far as expenses were concerned.

17 A. Definitely.

18 Q. Okay. And your son always knew that, when you  
19 financed his construction, that this was, in fact,  
20 a loan from you to him.

21 A. Yes.

22 Q. It was not a gift.

23 A. No.

3/8/11 J.A. DONIGIAN

1 Q. Okay.. And that you expected to be repaid.

2 A. Yes.

3 Q. And I assume it was -- and I assume, as with the  
4 other builders, when you were conducting business  
5 with your son, you maintained ownership of the  
6 property.

7 A. Yes, I did.

8 Q. Okay. At what point did you transfer ownership of  
9 the property to your son?

10 A. The same as the others: Mostly it was probably a  
11 week before.

12 Q. Let me ask you this. Why just not show up at the  
13 closing and sell the property yourself, as owner?

14 A. Because I didn't want to be the one that  
15 transferred the lots. In case there was something  
16 wrong with the house, they could not come back to  
17 me and say, "My dishwasher's not working." That  
18 was what my attorney was saying back then. You  
19 know, that's the only reason I stayed out of it.

20 I went to a few other closings years ago,  
21 before I did that, and I kept the lot in my name.  
22 I transferred it directly to the customer. And  
23 the attorney at that time says, "That's not a very

3/8/11 J.A. DONIGIAN

## CERTIFICATE

I, Alix M. Godbout, a Licensed Shorthand Court Reporter and Notary Public for the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of the testimony of JACOB A. DONIGIAN, who was duly sworn, taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



Alix M. Godbout, LCR/RPR  
(NH LCR No. 29)